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Docket No. CAN-117

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : C. Lariviere et al.  
Serial No. : 09/375,045  
Filed : August 16, 1999  
Title : COMPRESSION-RESISTANT SANITARY NAPKIN  
  
Art Unit : 3761  
Examiner : Michelle M. Kidwell

I hereby certify that this correspondence is being deposited with the  
United States Postal Service as first class mail in an envelope addressed  
to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

February 27, 2004

(Date of Deposit)

Paul J. Higgins

(Name of applicant, assignee, or Registered Representative)

(Signature)

February 27, 2004

(Date of Signature)

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Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REQUEST TO REINSTATE APPEAL UNDER 37 C.F.R. 1.193(b)(2)

Dear Sir:

In response to the Office Action dated August 27, 2003 in which the Examiner reopened prosecution in the above-referenced application, the applicant hereby requests reinstatement of the previously requested appeal. Submitted herewith is a new appeal brief in accordance with the provisions of 37 C.F.R. 1.193(b)(2). In the event that a notice of appeal is required, then this document shall be considered such notice of appeal and any requisite fee should be charged to Deposit Account No. 10-0750/CAN-117/PJH

in the name of Johnson & Johnson for the cost of filing this Request. Three copies of this Petition are enclosed.

Respectfully submitted,

By: 

Paul J. Higgins  
Attorney for Applicant(s)  
Reg. No. 44,152

Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933-7003  
(732) 524-1728  
Dated: February 27, 2004



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APPEAL BRIEF

Dear Sir:

This is an appeal from the Final Rejection dated August 20, 2002, rejecting Claims 1-22  
i.e., all of the pending claims of Appellants' above-identified patent application.

**I. REAL PARTY IN INTEREST**

The real party in interest is Johnson & Johnson, Inc, a corporation of Canada, having an  
address at 7101 Notre Dame Street, East Montreal, Quebec, Canada, H1N2G4.

## **II. RELATED APPEALS AND INTERFERENCES**

There are no currently pending appeals or interferences relating to the present pending Patent Application.

## **III. STATUS OF THE CLAIMS**

Claims 1-22 are currently pending. This appeal is taken from the Final Rejection of Claims 1-22, i.e., all of the pending claims of the subject application.

## **IV. STATUS OF THE AMENDMENTS**

No amendments have been made to the present pending application, accordingly, the claims stand as provided in the appended Exhibit A.

## **V. SUMMARY OF THE INVENTION**

The present claimed invention is directed to a sanitary napkin for placement in a crotch portion of an undergarment of a wearer having a longitudinal axis and being further characterized by having at least one preferential bending zone extending obliquely in relation to the longitudinal axis. The preferential bending zone may be created by mechanically embossing the surface of the sanitary napkin to locally densify the absorbing materials of the article. The preferential bending zone causes the sanitary napkin to resist lateral compression forces exerted by the thighs of the wearer and thereby prevents bunching of the article on the undergarment. The preferential bending zone also enhances fluid distribution by channeling the fluid away from the point of contact. The advantages of the present invention are increased efficiency of the sanitary napkin in collecting bodily fluids and greater comfort for the wearer of the napkin, particularly when the napkin is thin. See Applicant's specification at page 2, lines 3 to 25, page 18, lines 2-27, page 20, lines 1-18, Figures 1 and 2, and the appended claims.

**VI. ISSUES**

- A. Whether Claims 1, 3-5, 7-9, 12, 14-16 and 18-20 are properly rejected under 35 USC § 102(b) as being anticipated by Mizutani (US 5,613,960).
- B. Whether Claims 1, 3-5, 7-8, 12, 14-16 and 18-19 are properly rejected under 35 U.S.C. 102(b) as being anticipated by Fung et al. (US 5,423,486).
- C. Whether claims 2, 6, 13 and 17 are properly rejected under 35 U.S.C. 103(a) as being unpatentable of Mizutani (US 5,613,960).
- D. Whether claims 10-11 and 21-22 are properly rejected under 35 U.S.C. 103(a) as being unpatentable over Fung et al. (US 5,423,786).
- E. Whether claims 1-22 are properly rejected under the judicially created doctrine of obviousness-type double patenting over claims 1 and 3-18 of U.S. Patent No. 6,312,416.

**VII. GROUPING OF THE CLAIMS**

- A. Rejection of Claims 1, 3-5, 7-9, 12, 14-16 and 18-20 under 35 USC § 102(b) as being anticipated by Mizutani (US 5,613,960).

All claims stand or fall together.

- B. Rejection of Claims 1, 3-5, 7-8, 12, 14-16 and 18-19 under 35 U.S.C. 102(b) as being anticipated by Fung et al. (US 5,423,486).

All claims stand or fall together.

- C. Rejection of claims 2, 6, 13 and 17 under 35 U.S.C. 103(a) as being unpatentable of Mizutani (US 5,613,960).

All claims stand or fall together.

- D. Rejection of claims 10-11 and 21-22 under 35 U.S.C. 103(a) as being unpatentable over Fung et al. (US 5,423,786).

All claims stand or fall together.

- E. Rejection of claims 1-22 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3-18 of U.S. Patent No. 6,312,416.

All claims stand or fall together.

## **VIII. ARGUMENTS**

- A. Rejection of Claims 1, 3-5, 7-9, 12, 14-16 and 18-20 under 35 USC § 102(b) as being anticipated by Mizutani (US 5,613,960).**

Claims 1, 3-5, 7-9, 12, 14-16 and 18-20 stand rejected under 35 U.S.C. 102(b) as being anticipated by Mizutani (US 5,613,960). Applicants respectfully traverse. Mizutani discloses a disposable body fluids absorbent padding formed with a liquid guiding fibrous sheet interposed between a liquid permeable topsheet and a liquid-absorbent core. The fibrous sheet is intermittently fused to the topsheet by a plurality of fused spots in a lattice pattern as shown in Figure 1. Each of the fused spots is disclosed as being compressed to have a high density and to form a groove along which body fluids may diffusely flow and be rapidly guided into the core.

It is respectfully submitted that there is no disclosure or suggestion within the cited reference, nor is it inherent, that the fused spots between the topsheet and fibrous sheet will provide a preferential bending zone to the absorbent article. More particularly, merely fusing the upper two layers in the manner disclosed in this reference will not inherently result in the formation of a preferential bending zone that will act as a hinge in use. Referring to Figure 2 in the cited reference, it is apparent that the relative thickness' of the topsheet, fibrous layer

and absorbent core suggest that fusing the upper relatively thin layers will not impact how the overall absorbent product will deform upon the application of lateral force and will not form a preferential bending zone as required by the present claimed invention. In fact it is common practice to thermally emboss topsheet nonwoven materials to impart strength and wet integrity to these materials. This type of conventional embossing has no effect on the way an absorbent product deforms under the application of lateral forces or which they are utilized with respect to the formation of preferential bending zones.

In contrast, the present claimed invention requires the sanitary napkin to have opposed longitudinally extending side edges and a longitudinal axis and a preferential bending zone that extends obliquely to the longitudinal axis and which extends from one longitudinal side area to an opposite longitudinal side area of the sanitary napkin. It is respectfully submitted that the cited reference fails to disclose or fairly suggest a sanitary napkin having the above expedient.

Applicants, in an interview with the Primary Examiner, provided the Patent Office with samples of a sanitary napkin which was believed by Applicant to be formed in accordance with the teachings of the Mizutani reference and thus illustrate the disposable body fluids absorbent padding taught in the Mizutani reference. More specifically, the sanitary napkin sample had a topsheet fused to a lower fibrous layer as taught by Mizutani and illustrated in Figure 2. Applicants demonstrated during a personal interview with the Primary Examiner that the sample sanitary napkin did not possess an identifiable preferential bending zone that extended along the pattern of fused bonding between the topsheet and lower fibrous layer. The Primary Examiner did not disagree with any of the evidence presented during the interview. However, it is the position of the Patent Office, as stated in the Official Communication dated January 31, 2003, that the arguments presented during the interview, "do not reflect what the applicant has claimed." The Examiner contends "that the embossed spots of Mizutani form the embossed line as claimed." (emphasis added). It is respectfully submitted that it is the Patent Office and not Applicant that has misconstrued the claim terminology. Independent claim 1 requires "sanitary napkin being characterized by a

preferential bending zone” not an “embossed line” as alleged by the Patent Office. This mischaracterization of the claims is further evidenced in the Official Communication wherein the Examiner has acknowledged that “The function of the embossed spots of Mizutani may differ from the claimed bending lines of the instant application, but that is not what has been set forth in the claims.”

Applicants respectfully disagree with this position. As noted above, the instant claims are directed to bending lines, not embossed spots. The acknowledgment by the Patent Office that the embossed spots in Mizutani do not function as bending lines directly supports Applicants arguments for patentability over the Mizutani reference. This, in fact, was the purpose of the providing the sanitary napkin samples to the Primary Examiner, to demonstrate that the embossed spots formed in accordance with Mizutani did not function as bending lines.

In view of the foregoing, Applicants respectfully request withdrawal of the present rejection and allowance of the pending claims.

**B. Rejection of Claims 1, 3-5, 7-8, 12, 14-16 and 18-19 under 35 U.S.C. 102(b) as being anticipated by Fung et al. (US 5,423,486).**

Claims 1, 3-5, 7-8, 12, 14-16 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Fung et al. (US 5,423,486). Applicants respectfully traverse.

Fung et al teaches an absorbent core for use in an absorbent product. The absorbent core comprises an absorbent batt that is folded upon itself along a pair of generally parallel longitudinally extending fold lines to form a middle body-facing panel and two side panels. The panels are disclosed as being substantially of the same width along their entire longitudinal length or alternatively the side panels may taper to a narrower width as they extend longitudinally from the central transverse axis. The panels may be embossed with a variety of patterns including longitudinally extending channels, widthwise channels or diagonal channels.



There are no embodiments disclosed in the Fung et al reference where the side panels have channels formed with the same embossing pattern as the middle panel and accordingly, none of the resultant absorbent products will have an identifiable preferential bending zone that extends obliquely to the longitudinal axis and which extends from one longitudinal side area to an opposite longitudinal side area of the sanitary napkin. That is, even assuming that one panel in the absorbent batt was provided with a diagonally extending embossed channel, the adjacent panels having a different embossing pattern would result in an absorbent product that would not possess a preferential bending zone that extends obliquely to the longitudinal axis. It would be necessary for at least two or preferably all three panels to have the same embossing pattern to create the obliquely extending preferential bending zone as required by the present claimed invention. Fung clearly fails to disclose or fairly suggest this expedient and thus fails to anticipate the present pending claims.

In the above discussed interview with the Primary Examiner, Applicants provided the Patent Office with a sample of an absorbent core which was believed by Applicant to illustrate the technology taught in the Fung reference. More specifically, the absorbent core was compressed with embossed channels in the same pattern as taught by Fung. As demonstrated during the interview, the sample absorbent core did not possess an identifiable preferential bending zone that extends obliquely to the longitudinal axis and which extends from one longitudinal side area to an opposite longitudinal side area. The Primary Examiner did not disagree that there was no identifiable preferential bending zone extending obliquely. Further in this regard, it should be noted that the Official Communication dated January 31, 2003, did not present any arguments directed to the embossed cores provided to the Patent Office during the interview as they related to the Fung reference.

In view of the foregoing, Applicants respectfully request withdrawal of the present rejection and allowance of the pending claims.

**C. Rejection of claims 2, 6, 13 and 17 under 35 U.S.C. 103(a) as being unpatentable of Mizutani (US 5,613,960).**

Claims 2, 6, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable of Mizutani (US 5,613,960). Applicants respectfully traverse.

Claims 2, 6, 13 and 17 are dependent from an allowable base claim and thus are considered patentable for the above reasons of record. Moreover, as tacitly acknowledged by the Patent Office, the cited reference fails to teach or fairly suggest the expedients in these claims and merely relies on Applicant's disclosure for failing to state that these expedients are critical. This is not the proper test of non-obviousness and accordingly the above rejection is improper. The proper test for obviousness is what the references teach or suggest to one of ordinary skill in the art at the time of the invention. The Patent Office has not provided any motivation, based upon the prior art, to modify the Mizutani reference in the manner suggested by the Patent Office. In the absence of such motivation, the Patent Office has failed to establish a prima facie case of obviousness.

In view of the foregoing, Applicants respectfully request withdrawal of the present rejection and allowance of the pending claims.

**D. Rejection of claims 10-11 and 21-22 under 35 U.S.C. 103(a) as being unpatentable over Fung et al. (US 5,423,786).**

Claims 10-11 and 21-22 are dependent from an allowable base claim and thus are considered patentable for the above reasons of record. Moreover, as tacitly acknowledged by the Patent Office, the cited reference fails to teach or fairly suggest the expedients in these claims and merely relies on Applicant's disclosure for failing to state that these expedients are critical. This is not the proper test of non-obviousness and accordingly the above rejection is improper. As noted above, the proper test for obviousness is what the references teach or suggest to one of ordinary skill in the art at the time of the invention. The Patent Office has not provided

any motivation, based upon the prior art, to modify the Mizutani reference in the manner suggested by the Patent Office. In the absence of such motivation, the Patent Office has failed to establish a prima facie case of obviousness.

In view of the foregoing, Applicants respectfully request withdrawal of the present rejection and allowance of the pending claims.

**E. Claims 1-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3-18 of U.S. Patent No. 6,312,416.**

Claims 1-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of co-pending Application No. 09/374,512, and over claims 1 and 4-19 of co-pending Application No. 09/477,244.

Applicants have previously submitted a terminal disclosure to obviate the provisional double patenting rejections, and thus believe that the claims are now in condition for allowance.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

By: 

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Dated: February 27, 2004

Exhibit A.

We claim:

1. A sanitary napkin for placement in a crotch portion of an undergarment of a wearer, said sanitary napkin having a main body with a longitudinal axis, two opposite longitudinal side areas and a central region intermediate said two opposite side areas, said sanitary napkin being characterized by a preferential bending zone on said main body extending obliquely from one longitudinal side area of the sanitary napkin to an opposite longitudinal side area and obliquely crossing the longitudinal axis of the sanitary napkin at said central region.
2. A sanitary napkin as defined in claim 1, wherein said sanitary napkin having a thickness not exceeding about 5 mm.
3. A sanitary napkin according to claim 1 comprising a plurality of preferential bending zones spaced apart from one another.
4. A sanitary napkin according to claim 3, wherein said preferential bending zones intersect each other.
5. A sanitary napkin according to claim 3, wherein said preferential bending zones are operative to create resistance to lateral compression when said sanitary napkin is in use.
6. A sanitary napkin according to claim 1, wherein said preferential bending zone is arcuate.
7. A sanitary napkin according to claim 1, wherein said main body includes a fluid permeable cover layer, an absorbent system and a liquid impervious barrier layer.

8. A sanitary napkin according to claim 7, wherein said preferential bending zone is an embossing on said absorbent system.
9. A sanitary napkin according to claim 7, wherein said preferential bending zone is an embossing of said fluid permeable cover layer and on said absorbent system.
10. A sanitary napkin according to claims 1, wherein said sanitary napkin includes a fastener for retaining said main body to an undergarment.
11. A sanitary napkin according to claim 10, wherein said fastener includes a flap.
12. A sanitary napkin for placement in a crotch portion of an undergarment of a wearer, said sanitary napkin having a main body with a longitudinal axis and two opposite longitudinal side areas, said sanitary napkin being characterized by a preferential bending zone on said main body, said preferential bending zone including a segment crossing the longitudinal axis of the sanitary napkin, said segment crossing the longitudinal axis obliquely in relation to said longitudinal axis, said preferential bending zone extending from one longitudinal side area of the sanitary napkin to an opposite longitudinal side area.
13. A sanitary napkin as defined in claim 12, wherein said sanitary napkin having a thickness not exceeding about 5 mm.
14. A sanitary napkin according to claim 12 comprising a plurality of preferential bending zones spaced apart from one another.
15. A sanitary napkin according to claim 14, wherein said preferential bending zones intersect each other.
16. A sanitary napkin according to claim 14, wherein said preferential bending zones are operative to create resistance to lateral compression when said sanitary napkin is in use.

17. A sanitary napkin according to claim 12, wherein said preferential bending zone is arcuate.
18. A sanitary napkin according to claim 12, wherein said main body includes a fluid permeable cover layer, an absorbent system and a liquid impervious barrier layer.
19. A sanitary napkin according to claim 18, wherein said preferential bending zone is an embossing on said absorbent system.
20. A sanitary napkin according to claim 18, wherein said preferential bending zone is an embossing of said fluid permeable cover layer and on said absorbent system.
21. A sanitary napkin according to claims 12, wherein said sanitary napkin includes a fastener for retaining said main body to an undergarment.
22. A sanitary napkin according to claim 21, wherein said fastener includes a flap.